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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,	)	CASE NO. 3:20-cr-00249-RS
Plaintiff,	)	
v.	)	<b>JOINT FILING REGARDING PROPOSED</b>
	)	<b>JURY INSTRUCTION 3.9 (TESTIMONY OF</b>
ROWLAND MARCUS ANDRADE,	)	<b>WITNESSES INVOLVING SPECIAL</b>
	)	<b>CIRCUMSTANCES)</b>
Defendant.	)	Jury Trial: 8:30 a.m. thru ~Mar. 10, 2025
	)	Court: Courtroom 3   17th Floor
	)	Judge: Hon. Richard Seeborg

At the charge conference today, the parties disagreed as to the proper formulation of Model Ninth Circuit Jury Instruction 3.9 (Testimony of Witnesses Involving Special Circumstances – Immunity, Benefits, Accomplice, Plea) as it relates to witnesses Jack Abramoff and Brian Darrow. The Court asked the parties to file jointly with their proposed response, and the parties do so here.

For context here, the entirety of Ninth Circuit Model Instruction No. 3.9 is:

**3.8 Testimony of Witnesses Involving Special Circumstances—  
Immunity, Benefits, Accomplice, Plea**

1 You have heard testimony from [*name of witness*], a witness who  
 2 [received [benefits] [compensation] [favored treatment] from the government in  
 3 connection with this case];

4 [admitted being] [was alleged to be] an accomplice to the crime charged. An  
 5 accomplice is one who voluntarily and intentionally joins with another person in  
 6 committing a crime];

7 [pleaded guilty to a crime arising out of the same events for which the defendant  
 8 is on trial. This guilty plea is not evidence against the defendant, and you may consider it  
 9 only in determining this witness's believability].

10 For [this] [these] reason[s], in evaluating the testimony of [*name of witness*], you  
 11 should consider the extent to which or whether his testimony may have been influenced  
 12 by [this] [any of these] factor[s]. In addition, you should examine the testimony of [*name*  
 13 *of witness*] with greater caution than that of other witnesses.

### 14 **Comment**

15 The instruction to consider accomplice testimony with “greater caution” is  
 16 appropriate regardless of whether the accomplice’s testimony favors the defense or  
 17 prosecution. *United States v. Tirouda*, 394 F.3d 683, 687-88 (9th Cir. 2005). The  
 18 Committee recommends giving this instruction whenever it is requested.

#### 19 **I. Government’s Proposed Instruction**

20 The government proposes that the Court instruct the jury using the proposed formulation below,  
 21 which tracks the Ninth Circuit Model Instruction. As the Ninth Circuit and other circuits have held, jury  
 22 instructions related to witnesses involving special circumstances, such as benefits or pleas, should  
 23 generally be modeled along the lines of the circuit’s pattern instructions. *See United States v. Tirouda*,  
 24 394 F.3d 683, 687-88 (9th Cir. 2005) (holding that an accomplice witness instruction should be properly  
 25 formulated along the lines of the Ninth Circuit pattern instruction); *see also United States v. Mason*, 126  
 26 F. App’x 702, 706 (6th Cir. 2005) (quoting *United States v. Carr*, 5 F.3d 986, 992 (6th Cir. 1993)).  
 27 (“[I]n this circuit, specific instructions explicitly highlighting problems with accomplice testimony are  
 28 not required as long as the instruction “substantially covers” the substance of the pattern jury  
 instruction.”). Based on this model language, the government proposes that the Court give the following  
 instruction as to Jack Abramoff and Brian Darrow:

29 You have heard testimony from Jack Abramoff, a witness who received benefits  
 30 from the government in connection with this case, and admitted being an accomplice to  
 31 the crime charged. An accomplice is one who voluntarily and intentionally joins with  
 32 another person in committing a crime.

1 Mr. Abramoff pleaded guilty to a crime arising out of the same events for which  
2 the defendant is on trial. This guilty plea is not evidence against the defendant, and you  
3 may consider it only in determining this witness's believability.

4 For these reasons, in evaluating the testimony of Jack Abramoff, you should  
5 consider the extent to which or whether his testimony may have been influenced by any  
6 of these factors. In addition, you should examine the testimony of Jack Abramoff with  
7 greater caution than that of other witnesses.

8 You have heard testimony from Brian Darrow, a witness who received benefits  
9 from the government in connection with this case, and pleaded guilty to a crime arising  
10 out of the same investigation for which the defendant is on trial. This guilty plea is not  
11 evidence against the defendant, and you may consider it only in determining this  
12 witness's believability.

13 For these reasons, in evaluating the testimony of Brian Darrow, you should  
14 consider the extent to which or whether his testimony may have been influenced by any  
15 of these factors. In addition, you should examine the testimony of Brian Darrow with  
16 greater caution than that of other witnesses.

## 17 II. Defendant's Proposed Instruction

18 Mr. Andrade's language, which is generally modeled along the lines of the pattern instruction, better  
19 focuses the jury's attention to the purpose of the instruction that is cautioning the jurors regarding these  
20 witnesses' believability. Mr. Andrade proposes and requests the following language:

21 You have heard testimony from Jack Abramoff and Brian Darrow, who pled  
22 guilty to crimes arising out of the same events or investigation for which the  
23 defendant is on trial, and received favorable plea deals from the government to  
24 testify.

25 The guilty pleas of Jack Abramoff and Brian Darrow are not evidence against  
26 the defendant, and you may consider them only in determining the believability of  
27 these witnesses.

28 For these reasons, in evaluating the testimony of Jack Abramoff and Brian  
Darrow, you should consider, for each of them, the extent to which or whether their  
testimony may have been influenced by either of these factors.

In addition, you should examine the testimony of Jack Abramoff and Brian  
Darrow with greater caution than that of other witnesses.

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1 DATED: March 4, 2025

Respectfully submitted,

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